

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Telecommunications Relay Services and) CG Docket No. 03-123
Speech-to-Speech Services for)
Individuals with Hearing and Speech Disabilities)
)
Purple Communications, Inc.)
Emergency Petition for Limited Waiver)

ORDER

Adopted: December 6, 2013

Released: December 6, 2013

By the Acting Chief, Consumer and Governmental Affairs Bureau:

1. In this order, the Consumer and Governmental Affairs Bureau (CGB) of the Federal Communications Commission (FCC, or Commission), on its own motion, pursuant to delegated authority,¹ modifies the August 13, 2013² conditional waiver of the Commission's speed-of-answer (SOA) rule³ with respect to Internet Protocol (IP) relay service (IP Relay) granted to Purple Communications, Inc. (Purple).⁴ CGB modifies the waiver to apply when there is a specified sustained increase in traffic that occurs during any 30-day period that includes the day for which a waiver is needed, rather than being limited to increases sustained over a calendar month.

I. THE AUGUST 13, 2013 WAIVER ORDER

2. On July 11, 2013, Purple requested, on an emergency basis, a 120-day waiver of the Commission's SOA rule with respect to its IP Relay service.⁵ Purple asserted that such a waiver was necessary in light of traffic surges resulting from the recent cessation of IP Relay service by Sorenson Communications, Inc. (Sorenson), announced July 8, 2013, and effective July 31, 2013.⁶ Purple added that the waiver would enable Purple “to quantify the resulting demand, then recruit and train additional IP Relay staff, so that it can comply with the Commission's strict speed-of-answer requirements.”⁷

¹ 47 C.F.R. §§ 0.141, 0.361.

² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Purple Communications, Inc., Emergency Petition for Limited Waiver*, CG Docket No. 03-123, Order, 28 FCC Rcd 12218 (CGB 2013) (*August 13, 2013 Waiver Order*).

³ 47 C.F.R. § 64.604(b)(2).

⁴ IP Relay is a form of telecommunications relay service (TRS) in which an individual with a hearing and/or speech disability or who is deaf-blind connects to a communications assistant (CA) using an IP-enabled device via the Internet. *See* 47 C.F.R. § 64.601(17).

⁵ *See* Purple Communications, Inc., Emergency Petition for Limited Waiver (filed July 11, 2013) (Purple Petition).

⁶ *See* Letter from John T. Nakahata, Wiltshire & Grannis LLP, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (July 8, 2013).

⁷ Purple Petition at 2.

3. On August 13, 2013, CGB granted Purple a limited waiver of the SOA rule for the period from July 31, 2013, through October 31, 2013. In addition, for a subset of this period, from August 13, 2013,⁸ through October 31, 2013, CGB subjected the waiver to certain conditions that were developed in part based on Purple's forecasts of expected traffic.⁹ We found that in light of the cessation of IP Relay service by Sorenson, and the consequent migration of its customers, at short notice, to other providers, Purple had shown justification for a limited waiver of the SOA rule.

4. In placing conditions on the waiver for the period from August 13 through October 31, 2013, we explained that the purpose of the waiver was to allow Purple some flexibility to adjust to a sudden influx of IP Relay customers resulting from Sorenson's cessation of service after July 31, 2013, but not to excuse Purple for any SOA violations unrelated to the migration of Sorenson customers. We noted that Purple had stated that the influx of Sorenson customers was causing an overall surge in Purple's IP Relay traffic levels that put a constant strain on Purple's ability to process calls, independently of day-to-day variations in traffic levels. Therefore, we conditioned the waiver granted to Purple in order to target relief narrowly to the problem as defined.¹⁰

5. First, we required that, for the SOA waiver to apply to service provided during a given calendar month (or, in the case of August, during the portion of August that remained after release of the order), Purple's total session minutes for that month, as adjusted (Monthly Adjusted Session Minutes), must exceed a specified percentage of the forecast session minutes for that month (Monthly Forecast Session Minutes). Specifically, CGB directed that: (1) for the period from August 13 through August 31, 2013, Purple's monthly Adjusted Session Minutes had to be more than *115 percent* of the Monthly Forecast Session Minutes for the same period; (2) for the period from September 1 through September 30, 2013, Purple's Monthly Adjusted Session Minutes for September 2013 had to be more than *115 percent* of the Monthly Forecast Session Minutes for September 2013; and (3) for the period from October 1 through October 31, 2013, Purple's Monthly Adjusted Session Minutes for October 2013 had to be more than *125 percent* of the Monthly Forecast Session Minutes for October 2013.¹¹

⁸ For calls placed from July 31 through August 12, 2013, the waiver granted to Purple was not subject to conditions. *August 13, 2013 Waiver Order*, 28 FCC Rcd at 12220, ¶ 6 n. 18.

⁹ *Id.* at 12220-22, ¶¶ 6-11. Purple submitted to the Commission forecasts of total anticipated session minutes (Monthly Forecast Session Minutes) for the months of August, September, and October 2013, respectively, and for each day of those months (Daily Forecast Session Minutes). See Email from John Goodman, Chief Legal Officer, Purple Communications, Inc., to David Schmidt, Office of the Managing Director, FCC (Aug. 12, 2013).

¹⁰ *August 13, 2013 Waiver Order*, 28 FCC Rcd at 12220, ¶ 7.

¹¹ *Id.* at 12220-21, ¶ 8. Purple's actual monthly session minutes were adjusted for purposes of the waiver in order to ensure that the waiver was narrowly targeted to the specific problem caused by the sudden influx of Sorenson's ex-customers and that it did not automatically excuse Purple for any violations of our speed-of-answer requirements that might occur on specific days for reasons that were independent of the influx of traffic from Sorenson. Specifically, for any day in August or September for which the total session minutes exceeded the Daily Forecast Session Minutes by more than 25 percent, the minutes in excess of 125 percent of Daily Forecast Session Minutes were to be subtracted from Purple's total session minutes for that month. For any day in October for which the total session minutes exceeded the Daily Forecast Session Minutes by more than 40 percent, the minutes in excess of 140 percent of Daily Forecast Session Minutes were to be subtracted from Purple's total monthly session minutes. The total session minutes, as adjusted, were referred to as "Monthly Adjusted Session Minutes." *Id.* at 12221, ¶ 9. The required ratio of Monthly Adjusted Session Minutes to Monthly Forecast Session Minutes to trigger application of the waiver was increased from above 115 percent for August and September to above 125 percent for the month of October to reflect the fact that by October Purple would have had an opportunity to hire and train additional CAs to handle the higher levels of traffic it was incurring due to Sorenson's exit. *Id.* at 12220-21, ¶ 8.

6. Second, to provide assurance that the grant of a waiver did not affect Purple's ability and incentive to take effective steps to prevent fraud, we required Purple to report the number of calls disabled by its back-end fraud detection system by day for the 6 months from February through July 2013 and for each day of the period of the waiver.¹²

7. Third, in order to help the Commission monitor the number of unique IP Relay users who were porting from Sorenson to Purple and confirm that only legitimate users were ported, we required Purple to report the total telephone numbers ported and the number of unique users, for each day of the waiver period.¹³

II. MODIFICATION OF THE WAIVER

8. We conclude that the first condition of the waiver granted in the *August 13, 2013 Waiver Order* should be modified in order to more effectively achieve its purpose. In granting the waiver, we sought to exculpate Purple from unavoidable rule violations caused by the influx of Sorenson IP Relay customers. We noted that, based on the facts submitted by Purple, the influx was causing an overall surge in traffic levels that put a *constant* strain on its ability to process calls, independently of *day-to-day* variations in traffic levels.¹⁴ Thus, it was our intent for the waiver to excuse what otherwise would have been violations resulting from increases in traffic that began after Sorenson's exit and that were sustained over a substantial periods of time, but not to excuse any violations that might occur due to short-lived fluctuations in traffic that would be limited to a particular day or caused by events unrelated to the Sorenson customer influx. Therefore, we conditioned the waiver so that it would apply only where overall actual adjusted traffic levels, measured over the course of a month, proved to be substantially higher than the monthly levels previously forecast by Purple.¹⁵

9. The conditions imposed, however, addressed only *calendar* months.¹⁶ Those conditions did not account for the possibility that sustained, overall traffic increases caused by the Sorenson customer influx could occur over periods that were 30 days or more in duration but that did not necessarily coincide with the first and last days of the month. In other words, a sustained traffic increase lasting 30 days or more could overlap the end of one month and the beginning of another, without extending to the end of the second month (*e.g.*, because in the later portion of that second month, some of the new customers may have moved to another provider). Such sustained traffic increases would appear to be no less deserving of a waiver than an equivalent traffic increase that included all the days of a particular calendar month.

10. To ensure that SOA violations caused by the Sorenson influx and occurring within the waiver period were appropriately subject to waiver, therefore, we now modify the first waiver condition described above. Specifically, for the SOA waiver to apply to service provided on any particular day between August 13, 2013, and September 30, 2013, we now require that there must be at least one 30-day period that includes that day, for which Purple's total adjusted session minutes for the period (30-Day Adjusted Session Minutes) exceeded 115 percent of its total forecast session minutes (30-Day Forecast

¹² *Id.* at 12222, ¶ 10.

¹³ *Id.*, ¶ 11.

¹⁴ *Id.* at 12220-21, ¶ 8, 12221, ¶ 9.

¹⁵ *Id.* at 12220-21, ¶ 8.

¹⁶ See Letter from Monica Desai, Patton Boggs LLP, to Marlene H. Dortch, Secretary, FCC, at 2 (filed Aug. 23, 2013).

Session Minutes) for the same period.¹⁷ Similarly, for the SOA waiver to apply to service provided on any particular day between October 1, 2013, and October 31, 2013, there must be some 30-day period that includes that day, for which Purple's 30-Day Adjusted Session Minutes for the period exceeded 125 percent of its 30-Day Forecast Session Minutes for the same period.

11. We find that there is good cause to modify the waiver granted in the *August 13 Waiver Order* as described above.¹⁸ Specifically, we conclude that modifying the first condition of the waiver as described above, so that it can be satisfied over any 30-day period rather than only for a defined calendar month, more effectively reflects the special circumstances that warrant a deviation from the general rule to serve the public interest.¹⁹

III. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i) and 4(j) and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 225, and sections 0.141, 0.361 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361 and 1.3, this Order IS ADOPTED.

13. IT IS FURTHER ORDERED that the waiver granted in the *August 13 Waiver Order* IS MODIFIED to the extent set forth above.

14. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief
Consumer and Governmental Affairs Bureau

¹⁷ In other words, we now adjust the waiver condition to be based on Purple's total adjusted session minutes for any 30-day period ("30-day Adjusted Session Minutes"), rather than its total adjusted session minutes for a calendar month ("Monthly Adjusted Session Minutes"). Similarly, we require that such 30-day Monthly Adjusted Session Minutes must have exceeded the specified percentage of the forecast session minutes for that 30-day period ("30-day Forecast Session Minutes"), rather than requiring that they exceed a specified percentage of the forecast session minutes for the calendar month ("Monthly Forecast Session Minutes"). To illustrate this in practice, suppose that Purple failed to meet the SOA standard on September 15, 2013. For application of the rule to be waived with respect to that day, there must be at least one 30-day period that includes September 15, 2013, for which Purple's 30-Day Adjusted Session Minutes exceeded 115 percent of its 30-Day Forecast Session Minutes. For example, if for the 30-day period from August 18, 2013, through September 16, 2013, Purple's 30-Day Adjusted Session Minutes exceeded 115 percent of its 30-Day Forecast Session Minutes, then the waiver would apply to excuse the SOA violation on September 15, 2013.

¹⁸ 47 C.F.R. § 1.3.

¹⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).